

REMARKS

This amendment is responsive to the non-final Office Action issued September 4, 2009. Reconsideration and allowance of claims 3-4, 7-8, 11-12, and 14-20 as set forth herein is earnestly requested.

Status of the claims

Claims 1, 5, 9, and 13 stand rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Strobel, U.S. Pat. No. 7,050,844 (hereinafter "Strobel").

Claims 2, 6, and 10 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Strobel in view of Hall et al., U.S. Pub. No. 2003/0181809 (hereinafter "Hall").

Claims 3, 4, 7, 8, 11, and 12 are not rejected based on any cited references. Applicants understand these claims have been examined for compliance with § 102 and § 103 and have been determined to contain allowable subject matter.

Claims 9-13 stand rejected under 35 U.S.C. § 101 as allegedly directed to nonstatutory subject matter.

Claims 2-4, 6-8, 10-12 stand rejected under 35 U.S.C. § 112, 2nd paragraph for alleged indefiniteness and/or incompleteness.

The Office Action also identifies various alleged informalities in claims 1-13.

**The claims present patentable subject matter,
meet all statutory requirements, and should be allowed**

The remaining claims presently subject to § 101 rejection have been amended as suggested in the Office Action. Accordingly, Applicants respectfully request that the § 101 rejections be reconsidered and withdrawn.

The European-style claims have been amended to conform with standard U.S. claim practice. The Examiner's suggestions for improving claim clarity and definiteness have generally been adopted, and additional formal amendments have been made to improve clarity and definiteness. Accordingly, Applicants respectfully request that the claim objections and § 112 2nd paragraph rejections be reconsidered and withdrawn.

Claims 1, 2, 5, 6, 9, 10, and 13 are canceled, thus obviating all rejections under § 102 and § 103.

Claims 3, 7, and 11 are recast in independent form. These claims (and remaining dependent claims 4, 8, and 12) are not rejected under § 102 or § 103, and are understood to contain allowable subject matter.

In view of the foregoing, it is respectfully submitted that claims 3-4, 7-8, and 11-12 present patentable subject matter, meet all statutory requirements, and are in condition for allowance. Applicants respectfully request allowance of claims 3-4, 7-8, and 11-12.

New claim 14 recites processing including registering a 3D model representation of the instrument and the acquired 2D-images of the instrument, projecting the 3D model representation to derive 2D-model images of the instrument from the one or more viewing angles, and adapting the 3D-model representation to optimally match the projected 2D model images and the acquired 2D images of the instrument. The use of the term "projecting" finds support in the original specification at least at page 6 lines 31-33. Based at least on the understood compliance with § 102 and § 103 of original claims 3, 4, 7, 8, 11, and 12, Applicants respectfully submit that claim 14 also presents patentable subject matter.

New dependent claims 15-20 depend from claim 1, and accordingly are also believed to present patentable subject matter. The subject matter of claim 19 finds support in the original specification at least at page 7 lines 3-5.

CONCLUSION

For the reasons set forth above, it is submitted that claims 3-4, 7-8, 11-12, and 14-20 (all claims as set forth herein) distinguish patentably over the references of record and meet all statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,



Thomas E. Kocovsky, Jr.
Registration No. 28,383

Robert M. Sieg
Registration No. 54,446

FAY SHARPE LLP
The Halle Building, 5th Floor
1228 Euclid Avenue
Cleveland, OH 44115-1843
Telephone: 216.363.9000 (main)
Telephone: 216.363.9122 (direct)
Facsimile: 216.363.9001
E-Mail: tkocovsky@faysharpe.com

Direct All Correspondence to:
Yan Glickberg, Reg. No. 51,742
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
(440) 483-3455 (tel)
(440) 483-2452 (fax)